

The Honorable Barbara J. Rothstein

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHANDRASI GAEKWAR,

Plaintiff,

v.

AMICA MUTUAL INSURANCE COMPANY,

Defendant.

Civil Action No. 2:22-cv-1551-BJR

**ORDER DENYING AMICA’S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

I. INTRODUCTION

Plaintiff Chandrasi Gaekwar (“Plaintiff”) brings this action against Defendant Amica Mutual Insurance Company (“Amica”) for breach of contract, bad faith, and violation of the Insurance Fair Conduct Act (“IFCA”), as well as the Washington Consumer Protection Act (“WCPA”). Currently before the Court is Amica’s motion for partial summary judgment on the bad faith, IFCA, and WCPA claims. Dkt. No. 26. Having reviewed the motion, opposition and reply thereto, the record of the case, and the relevant legal authority, the Court will deny the motion. The reasoning for the Court’s decision follows.

II. BACKGROUND

A. Overview¹

In January 2020, Plaintiff was involved in a rear-end motor vehicle collision with non-party Edgar Garcia. Plaintiff was injured during the accident, including injuries to his left knee, neck, and back. It is undisputed that Mr. Garcia was liable for the accident and his insurance company, Nationwide Insurance, accepted fault and tendered Mr. Garcia's \$50,000 insurance policy limit to Plaintiff.

Plaintiff was insured by Amica at the time of the accident. The Amica policy provides \$10,000 in Personal Injury Protection ("PIP") for medical expenses and underinsured motorist ("UIM") insurance in the amount of \$300,000 per person. Amica concedes that Plaintiff was injured in the accident and that his initial medical treatment was reasonable, necessary, and causally related to the accident and, therefore, paid the \$10,000 PIP limit. However, following the initial medical care, Plaintiff had left knee replacement surgery in December 2021. Amica disputes that the surgery was medically necessary because of the accident and, therefore, disputes that it is responsible for the medical expenses associated with the surgery.

B. The History of Plaintiff's Left Knee Issues

1. Pre-accident treatment

Plaintiff began receiving treatment from Dr. Robert T. Goldman in September 2014 for degenerative changes to his knees, including "osteoarthritis, subchondral sclerosis, joint space narrowing, cystic degeneration and osteophyte formation." Dkt. No. 27, Declaration of Isabella M. Foxen, at Ex. E, Declaration of Dr. Goldman at 2. According to Dr. Goldman, Plaintiff's right knee was consistently worse than his left, but he was able to treat both knees conservatively with

¹ The following factual allegations are undisputed unless otherwise noted.

1 a series of Synvisc injections and physical therapy. *Id.* at 1. By May 2017, “[a]ctive
2 symptomology of [Plaintiff’s] left knee [had] resolved” but his right knee stopped responding to
3 conservative treatment. *Id.* As a result, Dr. Goldman performed right knee replacement surgery on
4 Plaintiff in May 2018.

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6 Dr. Goldman states that from May 2017 through the date of the traffic accident in January
7 2020, the degenerative conditions in Plaintiff’s left knee were “dormant” and Plaintiff “had no
8 complaints or active symptoms in his left knee.” *Id.* 1-2. Indeed, Plaintiff claims that he went on a
9 “world tour” and hiked in the Himalayas three months before the accident and “experienced no
10 knee problems” during this time. Dkt. No. 29 at 5. However, there is evidence in the record
11 indicating that Plaintiff was also considering replacement surgery on his left knee before the
12 accident. For instance, December 13, 2018 clinical notes from Plaintiff’s treating physician, Dr.
13 James D. Kriseman at Overlake Medical Center & Clinics (“Overlake”), state that Plaintiff was
14 planning to have the surgery in 2019. Dkt. No. 27, Ex. F at 25 (Plaintiff “will be going to New
15 Jersey next year to have [his] left knee replaced”). In addition, Dr. Goldman’s own treatment
16 notes indicate that Plaintiff was considering replacement surgery on his left knee before the
17 accident. Dkt. No. 27, Ex. G at 1 (Plaintiff “was planning to have a [left] knee replacement done a
18 year and a half ago, but it was cancelled due to the COVID pandemic[.]”).
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21 **2. Post-accident treatment**

22 Two days after the accident, on January 27, 2020, Plaintiff sought treatment at Overlake
23 where he complained of left knee pain, lower back pain, and right neck pain. On January 31,
24 2020, he underwent imaging on his left knee that showed moderate to advanced tri-
25 compartmental osteoarthritis and diffuse demineralization of the knee. He was referred to physical
26 therapy and ultimately attended 61 sessions. Medical records from Overlake dated March 26,
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1 2020 state that Plaintiff “is having no physical complaints at this time. His is strong and
2 good...He recently went on a hike at altitude....” Dkt. No. 29, Ex. 8 at 3. Treatment notes from
3 Plaintiff’s physical therapy dated March 2020 likewise indicate that he was not feeling discomfort
4 and had returned to cycling for exercise. Plaintiff was discharged from physical therapy in
5 September 2020 with at-home exercises to manage any ongoing knee pain. Plaintiff also received
6 Synvisc injections in his knee during this time.
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8 Plaintiff claims that he continued to have knee pain and stiffness after September 2020, so
9 he met with Dr. Trevor Scott at Proliance Orthopedics & Medicine in December 2020. New x-
10 rays were taken, and Dr. Scott noted that Plaintiff’s knee condition was severe enough that the
11 Synvisc injections would no longer be sufficient to control the pain and that Plaintiff would
12 benefit from a total knee replacement.
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14 On October 21, 2021, Plaintiff consulted with Dr. Goldman. Dr. Goldman ordered x-rays
15 of Plaintiff’s knee, which showed “severe osteoarthritis of the left knee and confirm[ed]
16 subchondral sclerosis, joint space narrowing, cystic degeneration and osteophyte formation.” Dkt.
17 No. 27, Ex. G at 2. The doctor noted that “multiple cortisone shots and hyaluronic acid injections”
18 had not been effective and recommended that Plaintiff receive a left knee replacement. *Id.* at 3.
19 Plaintiff underwent knee replacement surgery on December 13, 2021.
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21 **C. Amica’s Handling of Plaintiff’s UIM Claim**

22 Amica opened a claim for Plaintiff in January 2020 and paid his medical bills through
23 May 21, 2020, but ultimately determined that Plaintiff’s left knee replacement surgery was
24 unrelated to the accident and declined to pay for the surgery or related medical services. On
25 November 4, 2020, Plaintiff sent Nationwide a settlement demand for \$50,000 (*i.e.*, Mr. Garcia’s
26 policy limits) and cced Amica on the demand letter. In the letter, Plaintiff acknowledged that he
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1 had “preexisting congenital defects in both knees” before the accident but that he had “no left
2 knee symptomology whatsoever” and led a “very active lifestyle” including “a rigorous routine”
3 of long-distance bike rides on the weekends before the accident. Dkt. No. 29, Ex. 3 at 4-6.
4 Plaintiff also provided his medical records, including records that predated the accident. *Id.*
5 Nationwide paid out the policy limits after receiving the demand letter.
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7 On February 9, 2021, Plaintiff sent Amica a demand letter for \$140,000 to resolve his
8 UIM claim. *Id.* at Ex. 4. At the time, his total medical expenses were \$20,925.38 but he indicated
9 that per his treating physician’s recommendation, he will need a full knee replacement surgery
10 soon. Amica responded to the demand letter on March 4, 2021. Amica disputed that the accident
11 caused Plaintiff to need left knee replacement surgery; instead, Amica argued, Plaintiff’s ongoing
12 knee issues were related to degenerative conditions that pre-dated the accident. Amica further
13 noted that it had already paid the full \$10,000 PIP limit and Plaintiff had already received \$50,000
14 from Nationwide; thus, Amica offered Plaintiff \$1,000 in new money to settle his claim.
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16 Plaintiff rejected the offer, so Amica retained Dr. Sean Kearney to perform a medical
17 records review of Plaintiff’s case. Dr. Kearney did not review any pre-accident records but did
18 review Plaintiff’s medical records from right after the accident through September 2020. The
19 doctor concluded that the motor vehicle accident resulted in a “strain/contusion” of Plaintiff’s left
20 knee” and that this diagnosis had been resolved through treatment by May 21, 2020. Dkt. No. 27,
21 Ex. M at 7. Dr. Kearney further concluded that the “moderate-to-severe tricompartmental
22 osteoarthritis with noted varus malalignment” that was seen on Plaintiff’s left knee x-rays after
23 accident was “pre-existing and [was] neither caused by nor permanently aggravated by the motor
24 vehicle accident”. *Id.* Dr. Kearney noted that “[t]he natural history” of “tricompartmental
25 osteoarthritis” is that “the condition would continue to worsen over time, especially given the
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1 moderate-to-severe changes noted on imaging.” *Id.* at 8. Lastly, Dr. Kearney determined “any
 2 surgery proposed for this condition would be considered unrelated to the motor vehicle accident”
 3 and proceeding with the “left total knee arthroplasty, [] would be considered outside of the
 4 claim.” *Id.* at 9.

5 Based on Dr. Kearney’s finding, on December 6, 2021, Amica increased its settlement
 6 offer to \$5,000, which Plaintiff rejected. Thereafter, Plaintiff instituted this lawsuit on October 6,
 7 2022.
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9 III. STANDARD OF REVIEW

10 “The standard for summary judgment is familiar: ‘Summary judgment is appropriate
 11 when, viewing the evidence in the light most favorable to the nonmoving party, there is no
 12 genuine dispute as to any material fact.’” *Zetwick v. County of Yolo*, 850 F.3d 436, 440 (9th Cir.
 13 2017) (quoting *United States v. JP Morgan Chase Bank Account No. Ending 8215*, 835 F.3d
 14 1159, 1162 (9th Cir. 2016)). A court’s function on summary judgment is not “to weigh the
 15 evidence and determine the truth of the matter but to determine whether there is a genuine issue
 16 for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). If there is not, summary
 17 judgment is warranted.
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19 IV. DISCUSSION

20 As stated above, Plaintiff sued Amica for breach of contract,² as well as bad faith, and
 21 violation of the IFCA and the WCPA. Amica now moves for summary judgment on the
 22 extracontractual claims.
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25 ² After reviewing Plaintiff’s complaint, the Court notes that there is a significant question as
 26 to whether the complaint sufficiently alleges a breach of contract claim. The complaint does not set
 27 forth the relevant provisions of the insurance contract, nor does it make any allegations regarding
 Amica’s alleged performance under the contract, including what provisions of the contract Amica
 allegedly violated. Even under the liberal pleading standard set forth in Fed. R. Civ. P. 8(a), Plaintiff

1 **A. The IFCA Claim**

2 The “IFCA allows an insured who is ‘unreasonably denied a claim for coverage or
3 payment of benefits by an insurer [to] bring an action ... to recover the actual damages
4 sustained.’” *Hanson v. State Farm Automobile Insurance Company*, 261 F. Supp. 3d 1110, 1116
5 (W.D. Wash. 2017) quoting Wash. Rev. Code § 48.30.015. The Washington Supreme Court has
6 determined that to state a claim under the IFCA, an insured must show “that the insurer
7 unreasonably denied a claim for coverage *or* that the insurer unreasonably denied payment of
8 benefits.” *Perez-Crisantos v. State Farm Fire and Casualty Co.*, 389 P.3d 476, 482 (Wash. 2017)
9 (emphasis in original) (quoting *Ainsworth v. Progressive Cas. Ins. Co.*, 322 P.3d 6 (Wn.App.
10 2014)). Thus, an insured cannot maintain an IFCA claim based only on the insurer’s alleged
11 violations of the insurance regulations under the Washington Administrative Code; rather, the
12 insured must also demonstrate that the insurer also unreasonably denied coverage and/or payment
13 of benefits. *Id.* at 483; see also *Bennett v. Homesite Insurance Company*, 636 F. Supp. 3d 1267,
14 1274 (W.D. Wash. 2022).

15 Here, Amica argues that Plaintiff cannot maintain a claim under the IFCA because he
16 cannot establish that Amica unreasonably denied payment of his benefits; instead, Amica argues,
17 the undisputed facts establish that it reasonably disputes the value of Plaintiff’s claim.³ Amica
18 argues that it accepted all of Plaintiff’s medical bills up to the knee surgery but that it reasonably
19 disputes whether the need for surgery can be reasonably attributed to the vehicle accident. Amica
20 points out that Plaintiff admittedly had degenerative issues with his knee before the accident, was
21 considering knee replacement surgery prior to the accident, and it retained a medical expert who
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23 still “must allege some factual basis for [his] claim for relief[.]” *Burris v. Frito-Lay, Inc.*, 2009 WL
24 10726006, *2 (W.D. Wash. October 20, 2009).

25 ³ The parties do not dispute that Amica did not deny Plaintiff’s claim for coverage.

1 reviewed Plaintiff's medical records and determined that the accident did not cause Plaintiff to
2 need the surgery. Amica argues that based on the foregoing, no jury could reasonably conclude
3 that Amica unreasonably denied Plaintiff payment of benefits.

4 Plaintiff counters that Amica is cherry-picking the evidence and failed to reasonable
5 investigate his claim. According to Plaintiff, if Amica had reasonably investigated his claim, it
6 would have learned that Plaintiff's left knee was asymptomatic in the months before the accident
7 and therefore, it is unreasonable to for Amica to refuse to pay for the medical bills associated with
8 his knee surgery.

10 As stated above, to maintain his IFCA claim, Plaintiff must establish that Amica
11 unreasonably denied payment of his benefits. Amica argues that Plaintiff cannot meet this
12 criterion because it has not *denied* Plaintiff's payments; rather, it disputes the *value* of Plaintiff's
13 claim. However, the law is clear that "an unreasonably low offer of payment can constitute an
14 IFCA violation even if the insurer eventually pays." *Bennett*, 636 F. Supp. 3d at 1274; *see also*
15 *Morella v. Safeco Ins. Co. of Illinois*, 2013 WL 1562032, at *3 (W.D. Wash. April 12, 2013)
16 ("[A]n insurer cannot escape IFCA simply by accepting a claim and paying or offering to pay an
17 unreasonable amount."). Thus, whether Amica violated the IFCA by offering \$5,000 to resolve
18 Plaintiff's UIM claim is contingent on whether the offer is unreasonably low. The record contains
19 contradictory evidence on this point. For instance, Plaintiff claims he hiked in the Himalayas
20 three months before the accident without knee pain and Dr. Goldman testified that Plaintiff's left
21 knee was asymptomatic before the accident, but Dr. Kriseman's treatment notes indicate that
22 Plaintiff was contemplating left knee replacement surgery before the accident. Likewise, Dr.
23 Kearney's conclusion that Plaintiff's degenerative knee issue is one that would continue to
24 worsen over time, contradicts Plaintiff's and Dr. Goldman's claim that Plaintiff was pain-free
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1 before the accident.⁴ This Court cannot determine whether Amica’s offer was unreasonably low
2 without resolving the foregoing disputes of material fact, something the Court cannot do on
3 summary judgment. Thus, Amica’s request for summary judgment on Plaintiff’s IFCA claim is
4 denied. *See Curtis v. State Farm Mutual Automobile Insurance Co.*, 2023 WL 5152560, at *4
5 (W.D. Wash. August 10, 2023) (denying insurer’s motion for summary judgment on IFCA claim
6 because factual disputes existed regarding whether insurer reasonably investigated insured UIM
7 claim); *Spicher v. American Family Mutual Insurance Co. S.I.*, 2023 WL 5634210, at *3 (W.D.
8 Wash. August 31, 2023) (denying motion for summary judgment on IFCA claim because
9 “[r]easonableness’ can rarely be resolved at summary judgment, and the record here contains
10 conflicting evidence as to reasonableness”).
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12 **B. The Bad Faith Claim**

13 The fiduciary relationship between insurers and policyholders gives rise to a duty of good
14 faith. *American Manufacturers Mut. Ins. Co. v. Osborn*, 17 P.3d 1229, 1234-35 (Wn.App. 2001).
15 An insurer acts in bad faith when it denies coverage based upon mere suspicion and conjecture,
16 fails to conduct a good faith investigation of the facts before denying coverage, or denies
17 coverage based on a supposed defense that a reasonable investigation would have proved to be
18 meritless. *See Industrial Indem. Co. of the Northwest, Inc. v. Kallevig*, 792 P.2d 520, 526 (Wash.
19 1990). The insured bears the burden of proving that the insurer acted in bad faith, and the insurer
20 is entitled to summary judgment if reasonable minds could not differ that the denial of coverage
21 was based upon reasonable grounds. *Smith v. Safeco Ins. Co.*, 78 P.3d 1274, 1277 (Wash. 2003).
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26 ⁴ The Court also notes that Dr. Kearney did not review any medical records that pre-dated the
27 accident.

Here, Plaintiff contends Amica failed to conduct a reasonable investigation before refusing to pay for the left knee replacement surgery. As stated above, Amica originally offered Plaintiff \$1,000 to settle his UIM claim and then increased it to \$5,000. Brittany Am was the claims adjuster assigned to Plaintiff's claim at the time that Amica extended those offers. She testified that before extending the settlement offers, she reviewed the medical records provided by Plaintiff (Dkt. No. 29, Ex. 7 at p. 24 lns. 5-12) but admits that she failed to note in her summary of the records that those records indicated that Plaintiff hiked "up to over 17,000 feet" in the Himalayas in the months preceding the accident without any knee issues. *Id.* at p. 44 ln. 17- p. 45 ln. 6. She further testified that she did not request that Plaintiff provide further pre-accident medical records. *Id.* at p. 53, lns. 4-6.⁵

In addition, after Plaintiff rejected that initial \$1,000 offer, Amica retained Dr. Kearney to review Plaintiff's medical records and provide an opinion as to whether Plaintiff needed knee surgery due to injuries he incurred in the accident. As stated above, Dr. Kearney concluded that Plaintiff's knee injury from the accident had resolved by May 21, 2020 and, therefore, the need

⁵ The Court notes that Plaintiff's attorney, David Balint, frequently overstates and/or misrepresents the record testimony, including Ms. Am's testimony. For instance, Mr. Balint claims that Ms. Am "admitted she conducted no active investigation whatsoever, except to review the two demand letters and some of the records submitted by [Plaintiff]", citing to her deposition testimony at page 39. Dkt. No. 28 at 4. Ms. Am made no such statement. To the contrary, when asked "what independent investigation did Amica do during [her] time to settle this – to resolve this claim or analyze this claim?", Ms. Am responded, "I don't remember." Dkt. No. 29, Ex. 7 at p. 39, lns. 6-10. Likewise, Mr. Balint states that Ms. Am "could not explain how she calculated an offer of \$1000 new money other than to recite the settlement with Nationwide and the Amica PIP waiver", citing to page 33 of her deposition testimony. Dkt. No. 28 at 4. Once again, the cited deposition testimony says no such thing.

"An attorney does not simply act as an advocate for his client; he is also an officer of the court. As such, an attorney has a duty to good faith and candor in dealing with the judiciary." *United States v. Associated Convalescent Enterprises, Inc.*, 766 F.2d 1342, 1346 (9th Cir. 1985). The effectiveness and fairness of this nation's judiciary system depends on this fundamental tenant, a tenant that Mr. Balint has breached. Any further violations will not be tolerated and will result in sanctions.

1 for the left knee replacement surgery could not be attributed to the accident. However, Dr.
 2 Kearney's report indicates that Amica did not provide him with, nor did he review, Plaintiff's
 3 medical records from before the accident. As such, Plaintiff argues, Dr. Kearney did not provide
 4 "a full and fair evaluation of [Plaintiff's left knee condition, including whether it was causing him
 5 any problems prior to the [accident]." Dkt. No. 28 at 8.

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 7 Based on the foregoing, the Court concludes that a dispute of material fact exists as to
 8 whether Amica completed a reasonable investigation before refusing to pay for Plaintiff's knee
 9 surgery and the Court cannot resolve this dispute of material fact on summary judgment.
 10 Therefore, Amica's motion for summary judgment on the bad faith claim is denied. *See Bennett*,
 11 636 F. Supp. 3d at 1275 (denying summary judgment on bad faith claim because the parties had
 12 "submitted competing evidence as to whether [insurer] acted reasonably").

13 14 **C. The WCPA Claim**

15 The WCPA provides that "[u]nfair methods of competition and unfair or deceptive acts or
 16 practices in the conduct of any trade or commerce are hereby declared unlawful." RCW
 17 19.86.020. To prevail on a private CPA claim, Plaintiff must prove (1) an unfair or deceptive act
 18 or practice, (2) occurring in trade or commerce, (3) affecting the public interest, (4) injury to a
 19 person's business or property, and (5) causation. *Hangman Ridge Stables, Inc. v. Safeco Title Ins.*
 20 *Co.*, 105 Wash.2d 778, 784 (1986). A violation of any subsection of the Washington
 21 Administrative Code 284-30-330 is a per se unfair or deceptive act under the WCPA. *James E.*
 22 *Torina Fine Homes, Inc. v. Mut. of Enumclaw Ins. Co.*, 118 Wn. App. 12, 20-21 (2003). An
 23 insurer's breach of its duty of good faith also constitutes a per se violation of the CPA. *See*
 24 *Moratti ex rel. Tarutis v. Farmers Ins. Co. of Wash.*, 162 Wn. App. 495, 511 (2011).
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1 Amica argues that Plaintiff cannot maintain his WCPA claim because he has not identified
2 any injury to his business or property and therefore cannot establish a casual connection between
3 the alleged unfair acts and a cognizable injury. According to Amica, its alleged failure to pay
4 Plaintiff the full insurance benefits to which he is entitled does not constitute an injury to
5 Plaintiff's business or property for purposes of the WCPA. Amica's argument runs afoul of well-
6 established caselaw on this point. In *Peoples v. United Servs. Auto. Ass'n*, the Washington
7 Supreme Court considered a certified question regarding whether an insured can maintain WCPA
8 suits against their insurance carriers for wrongful denials of PIP payments. 194 Wash.2d 771
9 (2019). The Court concluded that such a claim could be maintained:

11 When parties enter an insurance contract, the insured obtains a legal right to benefits
12 upon the happening of a particular event. An insurance contract also gives rise to a
13 quasi-fiduciary relationship between the parties, which requires them to deal in good
14 faith. An insured, therefore, has a legally protected property interest in benefits due
15 under the contract and a related right to insurance dealings free from bad faith. Claims mishandling and wrongful denials of benefits invade this property interest, regardless of the type of event that triggers coverage.

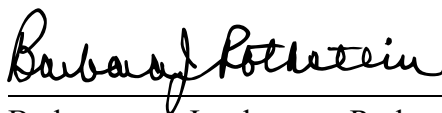
16 *Id.* at 780 (internal citations omitted). Thus, the Washington Supreme Court concluded, "the
17 deprivation of contracted-for insurance benefits is an injury to 'business or property'" for
18 purposes of the WCPA. *Id.* at 779. Cases following *Peoples* have allowed insureds to maintain
19 WCPA claims against their insurers for the wrongful denial of insurance benefits even when the
20 denial is not exclusively based on PIP coverage. *Nielsen v. California Capital Insurance*
21 *Company*, 2023 WL 6222537, *4 (E.D. Wash. Sept. 25, 2023); *see also Santiago v. GEICO*
22 *Advantage Ins. Co.*, 2023 WL 5802523, *2 (W.D. Wash. Sept. 7, 2023) (stating WCPA claim for
23 alleged wrongful denial of UIM benefits). Here, Plaintiff alleges that Amica has wrongfully
24 denied him the full benefit of his contracted-for UIM benefit. Thus, Plaintiff has sufficiently
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1 alleged an injury to his “business or property” for purposes of the WCPA. Amica’s motion for
2 summary judgment on the WCPA claim is denied.

3 **V. CONCLUSION**

4 For the foregoing reasons, the Court HEREBY DENIES Amica’s motion for partial
5 summary judgment on Plaintiff’s extracontractual claims.
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7 Dated this 28th day of November, 2023.

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10 Barbara Jacobs Rothstein
11 U.S. District Court Judge
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